

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHAMOND HENDERSON)
)
 v.) Civil No. 04-40119-NMG
)
)
UNITED STATES OF AMERICA)

GOVERNMENT'S REQUEST FOR SUMMARY DISMISSAL

The United States of America, by its undersigned counsel, hereby moves to summarily dismiss the June 15, 2004 Petition filed by Chamond Henderson under 29 U.S.C. § 2255. Despite the fact that Henderson was convicted in April, 2001 (more than three years ago) and that his conviction was affirmed by the United States Court of Appeals in February 2003, he has filed a Petition that contains no factual allegations, no supporting information and no basis on which to even assess, much less decide, his claims (whatever they in fact may be). Because the Petition ignores the requirements of Rule 2(b) of the Rules Governing Section 2255 proceedings and is facially inadequate to support a legitimate section 2255 claim, it should be dismissed. E.g., United States v. Labonte, 70 F.3d 1396, 1413 (1st Cir. 1995), overruled on other grounds, 520 U.S. 751 (1997) (conclusory statements that lack factual basis are insufficient to support a § 2255 motion); Ellzey v. United States, 324 F.3d 521, 523-24 (7th Cir. 2003) (§ 2255 motion that claims ineffective assistance of counsel and lacks factual elaboration does not comport with Rule 2(b)); United States v. Arestigueta, 2001 WL 929755 (D. Me.

Aug. 14, 2001) (habeas application must rest on a foundation of factual allegations alleged under oath). See also David v. United States 134 F.3d 470, 478 (1st Cir. 1998) (even if not conclusively belied by the record, §2255 petitions based on vague, conclusory or incredible claims may be summarily dismissed); United States v. DiCarlo, 575 F.2d 952, 954 (1st Cir. 1978) (summary dismissal of 2255 petition is appropriate where it is "(1) is inadequate on its face; or, (2) although facially adequate, is conclusively refuted as to the alleged facts by the files and records of the case,").

Respectfully submitted,

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

By: /s John A. Wortmann, Jr.
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CERTIFICATE OF SERVICE

I, JOHN A WORTMANN, JR., Assistant U.S. Attorney, do hereby certify that I have this 30th day of June, 2004, served the copy of the foregoing by mail to Chamond Henderson, PRO SE, No. 80165-038, FCI, Fort Dix West, PO Box 7000-5802 Fort Dix, NJ 08640.

/s John A. Wortmann, Jr.
JOHN A. WORTMANN, JR.
Assistant U.S. Attorney